

Issued in Washington, D.C., July 15, 1979.

David J. Bardin,
Administrator, Economic Regulatory
Administration.

1. Section 212.92 is amended to delete the definitions of "Increased rental cost" and "Vapor recovery system cost."

2. Section 212.92 is amended to add two new definitions, "Acquisition cost" and "Tax cost." "Acquisition cost" is added as the first definition in the section and "Tax cost" is added after the definition of "Service agreement" and is the last definition in this section.

§ 212.92 Definitions.

For purposes of this Subpart—

"Acquisition cost" means: (a) For retailers which make three (3) consecutive purchases from the same supplier, the actual purchase price paid for the most recent purchase of a product, or (b) for all other retailers the weighted average purchase price paid for the three (3) most recent purchases computed on a cents per gallon basis and in either case includes transportation costs of bringing the product into inventory. In computing the acquisition cost, DOE may disallow any purchases which have the effect of frustrating the purpose of the price regulations.

"Tax cost" means federal, local, and state excise, sales, and other similar taxes attributable to gasoline sales and computed on a cents per gallon basis. Federal, state, and local income, property, franchise, and other similar taxes are not included in this amount.

3. Section 212.93(a) is amended to read as follows:

§ 212.93 Price Rule.

(a)(1) Except for retail sales of gasoline, a seller may not charge a price for an item subject to this subpart which exceeds the weighted average price at which the item was lawfully priced by the seller in transactions with the class of purchaser concerned on May 15, 1973, plus an amount which reflects, on a dollar-for-dollar basis, the increased product costs concerned. Each seller shall maintain records sufficient to justify prices charged which reflect increased product costs, including, if applicable, records which demonstrate that the seller qualifies to determine increased product costs according to separate inventories. With respect to an item which is blended by the seller, and which was not sold by the seller on or before May 15, 1973, the "weighted average price at which the item was lawfully priced by the seller in

transactions with the class of purchaser concerned on May 15, 1973" shall be imputed to be the lawful price charged by the seller for the predominant covered product in the blend in transactions with the class of purchaser concerned on May 15, 1973.

(2) With respect to sales of gasoline by retailers, a retailer may not charge a price in a sale of any type or grade of gasoline which exceeds the most recent acquisition cost plus 15.4 cents per gallon, plus tax cost attributable to sales of that type or grade of gasoline. Beginning December 15, 1979, DOE shall adjust semi-annually the fixed cents per gallon markup to reflect the GNP deflator.

(3) The maximum lawful selling price as defined in § 212.93(a)(2) shall be decreased by five (5) cents per gallon for the thirty (30) days immediately following the failure to comply with the posting requirements as set forth in § 212.129 (b) and (d).

(4)(i) Upon ten (10) days prior notice to the Administrator, the Governor of a state may increase the fixed cents per gallon markup as defined in subparagraph (a)(2) above for all or some of the retailers in the state by an amount not to exceed ten (10) cents per gallon provided the increase is cost justified and achieves the objectives of the EPAA. The Governor must receive prior approval from the Administrator to grant any other increases to the fixed cents per gallon markup.

(ii) Any adjustments to the fixed cents per gallon markup made by the Governor pursuant to this section may be disallowed by the Administrator at any time.

(iii) For purposes of this rule, the term "Governor" includes the Governors of the 50 States, and the Chief Executive Officers of the District of Columbia, Puerto Rico, and the territories and possessions of the United States, other than the Panama Canal Zone.

4. Section 212.93(b)(1) (i) and (ii) are deleted.

5. Section 212.93(e) is amended in the first line and a new paragraph (3) is added to read as follows:

(e) Notwithstanding the provisions of paragraph (a) of this section and except for retail sales of gasoline:

(3) With respect to retail sales of gasoline, increased product cost not recouped on or before July 16, 1979 shall not be carried forward pursuant to

subparagraph (1) of this section to be recouped after July 16, 1979.

6. Section 212.129 is amended in paragraph (b) and a new paragraph (d) is added to read as follows:

§ 212.129 Price information and posting.

(b) Each retail seller of gasoline shall post and maintain in legible form, in numbers of a conspicuous size (not less than one-half (1/2) inch high), and in a prominent place on each face of each pump used to dispense gasoline in retail sales, or in numbers (not less than four (4) inches high) elsewhere at the retail outlet, the maximum permissible price allowed to be charged pursuant to Subpart E or F of this part for such product. The posting of the actual selling price is not considered to be the posting of the maximum permissible price as required by this section. Whenever an adjustment is made to the maximum permissible price, each seller must post the new adjusted maximum permissible price, and remove the prior posted price.

(d) Each retail seller of gasoline shall post and maintain in legible form, in numbers of a conspicuous size (not less than four (4) inches high) and in a prominent place at the retail station the maximum fixed cents per gallon markup permitted retailers as defined in § 212.93(a)(2). Whenever an adjustment is made to the maximum fixed cents per gallon markup the retailer shall post the number within twenty-four (24) hours after the adjustment is made and remove the prior posted number.

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10 CFR Part 211

[Docket No. ERA-R-79-35]

Amendments to Motor Gasoline Allocation Level Provisions

AGENCY: Economic Regulatory Administration, Department of Energy.
ACTION: Final Rule and Notice of Public Hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is amending the Mandatory Petroleum Allocation Regulations to provide that motor gasoline allocation levels for all priority uses specified in § 211.103 shall be based on usage during the period November 1977 through October 1978. These amendments are intended to

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promote both the conservation of scarce gasoline supplies and the equitable distribution of this product among priority users. In view of this purpose, today's amendments are being adopted on an emergency basis so that they may be effective August 1, 1979.

DATES: Effective date: August 1, 1979. All requests to speak at a hearing by August 1, 1979, 4:30 p.m. Chicago, Illinois hearing: August 9, 1979, 9:30 a.m., Washington, D.C. hearing: August 16, 1979, 9:30 a.m. All written comments by August 31, 1979, 4:30 p.m.

ADDRESSES: All comments and requests to speak at a hearing to: Economic Regulatory Administration, Office of Public Hearings Management, Docket No. ERA-R-79-35, Room 2313, 2000 M Street, NW., Washington, D.C. 20461. Chicago hearing location: John C. Kluczinski Building, Room 3619, 230 S. Dearborn Street, Chicago, Illinois 60604. Washington hearing location: Room 2105, 2000 M Street, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Comment Procedures), Economic Regulatory Administration, Room 2222-A, 2000 M Street NW., Washington, D.C. 20461, (202) 254-5201.
William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B-110, 2000 M Street NW., Washington, D.C. 20461, (202) 834-2170.
William E. Caldwell (Regulations and Emergency Planning), Economic Regulatory Administration, Room 2304, 2000 M Street NW., Washington, D.C. 20461, (202) 254-8034.
Alan T. Lockard (Office of Fuels Regulation), Economic Regulatory Administration, Room 6222, 2000 M Street NW., Washington, D.C. 20461, (202) 254-7422.
Jack Kendall or Ben McRae (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6739.

SUPPLEMENTARY INFORMATION:

- I. Introduction.
- II. Amendments Adopted.
- III. Procedural Requirements.
 - A. Section 501 of the DOE ACT.
 - B. Section 404 of the DOE ACT.
 - C. Section 7 of the FEA Act.
 - D. Section 553 of the APA.
 - E. Executive Order 12044.
- IV. Written Comment and Public Hearing Procedures
 - A. Written Comments.
 - B. Public Hearings.

I. Introduction

In order to minimize the adverse effects of the continuing shortage of motor gasoline supplies in this country, it is necessary that all users of this

product make a concerted effort to reduce gasoline consumption. It is our intent that our regulations provide, to the extent practicable, for the equitable sharing of the responsibility to conserve our energy supplies while recognizing the priority needs of some categories of users.

Section 211.103 of the allocation regulations sets forth the allocation levels currently used in determining the volume of gasoline supplies to which priority users are entitled under the regulations. This section provides for the allocation of gasoline in amounts necessary to meet current requirements for use in agricultural production and for essential military purposes. Certain other priority uses, such as emergency services and energy production, are entitled to receive their current requirements, subject to an allocation fraction. The remaining priority uses listed in § 211.103 are allocated gasoline supplies based on usage in the period November 1977 through October 1978, subject to an allocation fraction.

During recent months the supply of gasoline has been significantly less than that available during this period last year. As a result, many non-priority users have received substantially less gasoline than they received during corresponding months in the period November 1977 through October 1978, which is specified in § 211.102 as the base period for purposes of the motor gasoline allocation regulations. The consequences of such shortfalls have been most pronounced with respect to retail outlets that serve the general public. The inability of retailers to maintain normal supplies has resulted in many motorists having to wait in long lines and, in some instances, being unable to obtain gasoline at all. During this same period, priority users whose allocation levels are based on current requirements have generally been unaffected by the shortage.

We believe that gasoline consumption by all priority users can be reduced to or nearly to base period levels by means of determined conservation efforts to make up differences between base period usage and current requirements. Accordingly, we have concluded that provisions under § 211.103 for the allocation of gasoline supplies based on the current requirements of some activities and services are unnecessary to insure the maintenance of those operations. Indeed, we believe that these provisions may actually be serving as a disincentive to conservation by some users whose allocation levels are currently based on stated current requirements. This is particularly

serious in a shortage period since the failure of such users to reduce consumption where possible results in the reduction of supplies available for allocation to those users with allocation levels determined by base period usage.

In view of the above considerations, we have decided to amend § 211.103 to provide that the allocation levels for all priority users will be based on usage during the base period specified in § 211.102. We do not believe that this decision will create any substantial hardships for any priority users. Therefore, we believe today's action provides an effective means of responding to the current shortage situation, while continuing to appropriately recognize the importance of the activities and services rendered by those priority users whose allocation levels are presently based on current requirements. In any instance where reliance on base period usage would result in unavoidable hardship, relief will be available through our normal exception procedures. In addition, we are making special provisions as described below to insure the availability of supplies when needed for essential military purposes or to prevent the interruption of agricultural production activities.

In addition to promoting energy conservation by allocated users, we believe today's amendments to § 211.103 will also eliminate distribution problems resulting from the inability of some suppliers to anticipate with any confidence what the current requirements of particular purchasers will be. Since all allocation levels will now be determined by base period usage, suppliers will have a more reliable basis for determining their supply obligations and supply imbalances which may result from their uncertain supply obligations under the current provisions of § 211.103 will be reduced significantly.

Today's amendments also address another situation about which we have received numerous complaints. We have received frequent reports of exaggerated claims of current requirements by some priority users or their suppliers. In a period of shortage, consumers anticipating increasing difficulties in obtaining supplies may be expected to seek greater volumes than are actually needed to meet current needs. We have also received reports that some volume obtained in this way are then resold outside the allocation system at substantially higher spot market prices. Such abuses as may have occurred under the current regulations should be

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eliminated by basing current priority levels on base period usage.

II. Amendments Adopted

We are adopting amendments today which revise the allocation levels set forth in § 211.103. Effective August 1, 1979, § 211.103(b) will provide that an allocation level of one hundred percent of use in the base period, as currently defined in § 211.102, not subject to reduction by the application of an allocation fraction, will apply to the following uses: Essential military- and readiness-oriented operations of the Department of Defense; agricultural production; emergency services; energy production; sanitation services; telecommunication services; passenger transportation services; aviation ground support vehicles and equipment; and cargo, freight and mail hauling by truck.

Under today's amendments, suppliers will be required to supply these users with all volumes necessary to satisfy their allocation levels for gasoline prior to supplying any volumes to those priority users whose allocation levels will continue to be determined by base period usage, subject to an allocation fraction. (Under the revised provisions of § 211.103, these uses—which include industrial use; commercial use; government use; and social service agency use—will be listed under § 211.103(c).)

We believe that an allocation level of one hundred percent of base period usage will ordinarily permit the Department of Defense to secure sufficient volumes of gasoline for essential military- and readiness-oriented operations. In recognition of the vital importance of these activities to the well-being of the nation, however, we have provided under revised § 211.103(b) that an allocation level of one hundred percent of current requirements not subject to an allocation fraction will apply during any period for which the Secretary of Defense certifies to the Administrator of the ERA that such an allocation level is necessary as the result of unusual circumstances to meet the requirements for essential operations.

We also believe that allocations in accordance with base period usage will usually be sufficient to meet gasoline supply requirements for agricultural production. However, we recognize that changes in the commodities programs of the Department of Agriculture (DOA) may affect the fuel requirements for agriculture. Accordingly, we have assured the DOA that we will review the allocation level for agriculture each year and make any adjustments to that

level which are appropriate in light of any changes in the DOA's commodities programs.

We recognize, that seasonal variations and other factors can also cause significant variations in the demand patterns of agricultural users. Therefore, we are adopting a new paragraph (g) § 211.103 which will provide that bulk purchasers and wholesale purchaser-consumers may require their suppliers to defer to the next month any portions of their respective allocations for the current month for use in agricultural production. Agricultural users will also be able to require their suppliers to supply during the current month any portions of their allocations for agricultural production for the next month. However, such purchasers who wish to defer or borrow portions of their allocations for periods greater than one month will continue to be subject, as are all purchasers of allocated products, to the provisions of § 211.25(c) which permits such adjustments only in those instances where the purchaser is a wholesale purchaser and the supplier agrees to such supply arrangements.

A supplier which makes a supply adjustment for an agricultural user pursuant to the new § 211.103(g) will not be permitted to certify any volumes reflected by such an adjustment to its supplier more than once. Accordingly, we are adopting a new § 211.103(e)(2) which will prohibit a supplier that is required to make such supply adjustments from modifying its certification to its supplier under § 211.12(d)(1) on the basis of those adjustments.

Today's amendments will result in modified allocation levels for many priority users. Therefore, new § 211.103(e)(2) will also require that a supplier recertify to its supplier by September 15, 1979 its requirements for any purchaser whose allocation level is thus modified. Since some purchasers which have been receiving allocations based on current requirements may not know their base period volumes, the supplier of any purchaser whose allocation level is altered pursuant to today's final rule will also be required to notify such purchaser by September 15, 1979 of the total volumes it supplied to that purchaser in each month of the base period. In this regard, it should be noted that we are also amending § 211.103(f), effective August 1, 1979, to provide that applications for resolution of disagreements between suppliers and purchasers should be made to the Office of Petroleum Operations of the appropriate ERA Regional Office.

II. Procedural Requirements

We are adopting today's amendments on an emergency basis so that they may be in effect August 1, 1979. Our decision in this regard is based on our belief that these regulatory revisions should be implemented as soon as possible to promote the conservation of scarce gasoline supplies and to insure the equitable distribution of this product among priority users.

A. Section 501 of the DOE Act

Under section 501(e) of the Department of Energy Organization Act (DOE Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95-91), we may waive the prior notice and hearing requirements of subsections (b), and (c) and (d) of section 501 upon our findings that strict compliance with these requirements is likely to cause serious harm or injury to the public health, safety or welfare. We believe such a finding can and should be made in this instance. This belief is based on our determination that the amendments adopted by today's final rule should be made effective at the earliest practicable date, August 1, 1979, for the reasons stated above.

In accordance with section 501(e) and in order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we have scheduled public hearings in Washington, D.C. and in Chicago, Illinois and will receive written comments through August 31, 1979 with respect to today's amendments. We will reconsider today's action with regard to the comments received in order to determine whether we should take any further action in this rulemaking proceeding.

B. Section 404 of the DOE Act

Section 404(a) of the DOE Act requires that the Federal Energy Regulatory Commission (FERC) be notified whenever the Secretary of Energy proposes to prescribe rules, regulations, and statements of policy of general applicability in the exercise of functions transferred to him under section 301 or section 306 of the DOE Act. If the FERC determines, within such period as the Secretary may prescribe, that the proposed action may significantly affect any of its functions under sections 402(a)(1) or (b) of the DOE Act, the Secretary shall immediately refer the matter to the FERC.

Following an opportunity to review today's final rule, the FERC has declined to determine that it may significantly

affect one of its functions under the sections noted above.

C. Section 7 of the FEA Act

Under section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. § 787 *et seq.*, Pub. L. 93-275, as amended), the requirements of which remain in effect under section 501(a) of the DOE Act, the delegate of the Secretary of Energy shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the administrator of the Environmental Protection Agency (EPA) may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment. Such comments shall be published together with publication of notice of the proposed action.

Prior review by the EPA Administrator may be waived for a period of fourteen days if there is an emergency situation which necessitates that a proposed action be made effective at a date earlier than that which would permit the EPA Administrator the five working days opportunity for prior comment. Notice of any such waiver shall be given to the EPA Administrator and filed with the Federal Register with the publication of notice of proposed or final agency action and shall include an explanation of the reasons for such waiver, together with supporting data and a description of the factual situation in such detail as is determined will apprise the EPA and the public of the reasons for such waiver.

We have determined that the five working days opportunity for prior comment by the EPA Administrator should be waived. In view of the emergency nature of today's amendments, we believe such a waiver is necessary in order to permit a meaningful opportunity for public comment, while insuring that the amendments may be made effective August 1, 1979. A copy of the amendment and this preamble have been provided to the EPA.

D. Section 553 of the APA

Section 553(d) of the Administrative Procedure Act requires that a substantive rule not become effective less than thirty days after its publication unless the agency promulgating the rule finds good cause to waive this requirement and publishes this finding together with the rule. We have determined that good cause is found to waive the section 553(d) requirement for the reasons stated above in support of

making today's amendments effective August 1, 1979

E. Executive Order 12044

The sixty-day advance public comment period and other procedural requirements for proposed rulemakings required pursuant to Executive Order 12044, entitled "Improving Government Regulations" (43 FR 12661, March 23, 1978) and DOE's implementing procedures, DOE Order 2030 (44 FR 1032, January 3, 1979), have been waived by the Deputy Secretary of Energy as they relate to both the final rule and the proposed rules presented in the preceding sections for the reasons previously stated for making today's amendments effective August 1, 1979.

III. Written Comment and Public Hearing Procedures

A. Written Comments

You are invited to participate in this proceeding by submitting data, views or arguments with respect to any matters relevant to this notice. Comments should be submitted by 4:30 p.m., August 31, 1979 to the address indicated in the "Addresses" section of this notice and should be identified on the outside envelope and on the document with the docket number and the designation: "Amendments to Motor Gasoline Allocation Provisions." Ten copies should be submitted.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of such information or data and to treat it according to our determination.

B. Public Hearings

1. *Procedure for Requests to Make Oral Presentation.* If you have any interest in the matters discussed in this notice, or represent a group or class of persons that has an interest, you may make an oral request by 4:30 p.m., August 1, 1979. For an opportunity to make oral presentation at either the Chicago or Washington, D.C. hearing on today's amendments. You should provide a phone number where you may be contacted through the day before the hearing.

If you are selected to be heard at a hearing, you will be so notified before 4:30 p.m., August 3, 1979, and will be required to submit one hundred copies of your statement to the appropriate hearing location before 9:30 a.m. on the day of the hearing.

2. *Conduct of the Hearings.* We reserve the right to select the persons to

be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An ERA official will be designated to preside at each of the hearings. These will not be judicial-type hearings. Questions may be asked only by those conducting the hearings. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

If you wish to ask a question at a hearing, you may submit the question, in writing, to the presiding officer. The ERA or, if the question is submitted at a hearing, the presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer. The question will be asked of the witness by the presiding officer.

Any further procedural rules needed for the proper conduct of a hearing will be announced by the presiding officer.

Transcripts of the hearings will be made and the entire records of the hearings, including the transcripts, will be retained by the ERA and made available for inspection at the DOE Freedom of Information Office, Room GA-152, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., Between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript of either hearing from the reporter.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 48267.)

In consideration of the foregoing, Part 211 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective August 1, 1979.

Issued in Washington, D.C., July 18, 1979.

David J. Bardin,
Administrator, Economic Regulatory
Administration.

1. Paragraph (a) of § 211.26 is revised to read as follows:

§ 211.26 Department of Defense allocations.

(a) Allocations of crude oil or any allocated product to the Department of Defense (except for requirements not related to essential military- and readiness-oriented operations) shall be supplied at an allocation level of one hundred (100) percent of current requirements without being subject to an allocation fraction, except as provided in § 211.103.

2. Section 211.103 is revised to read as follows:

§ 211.103 Allocation levels.

(a) *General.* The allocation levels listed in this section only apply to allocations made by suppliers to end-users which are bulk purchasers and to wholesale purchaser-consumers. Suppliers shall allocate to all purchasers to which the allocation levels apply in accordance with the provisions of § 211.10. End-users which are bulk purchasers and wholesale purchaser-consumers which are entitled to purchase motor gasoline under an allocation level not subject to an allocation fraction shall receive first priority and be supplied sufficient amounts to meet 100 percent of their allocation requirements. End-users which are bulk purchasers and wholesale purchaser-consumers which are entitled to purchase motor gasoline for all uses under an allocation level subject to reduction by application of an allocation fraction shall receive second priority.

(b) *Allocation levels not subject to an allocation fraction.* One hundred (100) percent of base period use for the following uses:

(1) Department of Defense use for essential military- and readiness-oriented operations; provided that the allocation level for such uses shall be one hundred (100) percent of current requirements during any period for which the Secretary of Defense certifies to the Administrator of ERA that such an allocation level is necessary as the result of unusual circumstances;

- (2) Agricultural production;
- (3) Emergency services;
- (4) Energy production;
- (5) Sanitation services;
- (6) Telecommunications services;
- (7) Passenger transportation services;

(8) Cargo, freight and mail hauling by truck;

(9) Aviation ground support vehicles and equipment.

(c) *Allocation levels subject to an allocation fraction.* One hundred (100) percent of base period use (as reduced by application of the allocation fraction) for the following uses:

- (1) Industrial use;
- (2) Commercial use;
- (3) Governmental use; and
- (4) Social service agency use.

(d) *Purchasers without an allocation level.* There shall be no allocation levels for end-users which are not bulk purchasers or for purchasers which are not otherwise described in paragraphs (b) and (c) of this section. Such end-users shall be supplier in accordance with the provisions of § 211.10(d)(2).

(e) *Base period volume.* (1) By September 15, 1979, each supplier which, during the base period, sold motor gasoline to a wholesale purchaser or end-user entitled to an allocation level which is a percentage of a base period use shall report to each of those purchasers the volume of motor gasoline which it sold to or transferred to that purchaser in each month of the base period year.

(2) By September 15, 1979, each wholesale purchaser which, during the base period year, sold motor gasoline directly to a wholesale purchaser or end-user entitled to an allocation level not subject to an allocation fraction shall certify to its supplier pursuant to the procedures of § 211.12(d)(1) its requirements for each calendar month for such end-users or wholesale-purchasers. Any increase or decrease in such certified requirements shall also be so certified to the supplier, provided that any change that results from the operation of paragraph (g) of this section shall not be certified to the supplier.

(f) *Resolution of disputes.* If a supplier and purchaser disagree over the volumes required to be supplied as a base period volume or as an adjusted base period volume, application for resolution of the dispute should be made to the Office of Petroleum Operations of the appropriate ERA Regional Office. ERA may require the production of any relevant information necessary and issue an order in accordance with the procedures of Subpart G of Part 205 or take any other action necessary to resolve the dispute. If a supplier's position is determined to be incorrect, it will be obligated to make up any volumes it should have supplied but did not.

(g) *Agricultural Supply Arrangements.* Upon request by a particular bulk

purchaser or wholesale purchaser-consumer for agricultural production, a supplier shall defer the requested portion of that purchaser's allocation for the current month to the next month or supply during the current month the requested portion of that purchaser's allocation for the next month.

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10 CFR Part 211

[Docket No. ERA-R-79-23-B]

Motor Gasoline Allocation Base Period and Adjustments

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final Rule and Request for Comments.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is issuing a final rule that will be effective on September 1, 1979, and provides as follows:

1. The rule permanently establishes the November 1977 through October 1978 period as the base period year.
2. For the present, the rule continues the unusual growth adjustment that was adopted on May 1, 1979. However, suppliers may require mid-level marketers seeking adjusted volumes to submit sworn certifications.
3. The rule requires wholesale purchaser-resellers to adjust downward their base period uses when they lose service station customers. The adjustment will correspond to the decrease in their supply obligations when retail sales outlets they served during the base period go out of business or otherwise reduce or terminate their allocation entitlements from them. To receive upward adjustments for unusual growth or for new outlets supplied pending an assignment order, wholesale purchaser-resellers will first be required to make the required downward certifications.
4. The rule provides that volumes purchased and sold during the base period year pursuant to orders issued under the state set-aside program will not create supply obligations or allocation entitlements.
5. The rule generally continues the other provisions of the May 1, 1979 interim final rule.

DATES: Effective date: September 1, 1979. Further written comments by September 20, 1979.

ADDRESSES: Written comments to: Office of Hearings Management,